

**ATTACHMENT 1**

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF MARYLAND**

**IN THE MATTER OF**

**Complaint of CloseCall America, Inc.**

)  
)  
)  
)  
)  
)

**Case No. \_\_\_\_**

**COMPLAINT OF CLOSECALL AMERICA**

CloseCall America, Inc. ("CloseCall") is a Maryland-based telecommunications company offering local, long distance, digital wireless, and Internet services primarily in Maryland, Delaware and New Jersey. CloseCall petitions the Public Service Commission of Maryland ("Commission") to direct Verizon Maryland, Inc. ("Verizon" or "VZ-MD") to provide wholesale access to voice messaging and digital subscriber line ("DSL") services that can be provided on loops that are also used for competitive local exchange carrier ("CLEC") services. As set forth below, Verizon has impermissibly tied its enhanced and local exchange services by refusing to provide voice mail and DSL services on loops over which its competitors provide local exchange services. Moreover, Verizon punishes consumers who switch to competitive local exchange services by abruptly disconnecting pre-existing voice messaging and DSL services. These anti-competitive practices are harmful to competitive entry and contrary to consumer interests.

**I. Verizon's Refusal to Make Voice Messaging and DSL Services Available on a Wholesale Basis is Calculated to Chill Local Competition in Maryland**

A. The Maryland environment that CloseCall finds itself in, marked by on-going Verizon tactics that frustrate competition in the local exchange market and restrict consumer choice, is telling

By way of background, more than seven years have passed since the Commission issued its ground-breaking ruling on local competition and over six years have passed since the passage of the federal Telecommunications Act, yet VZ-MD's competitors have gained precious little

traction in the local service market. Specifically, recent statistics from the FCC indicate that VZ-MD retains 96% of the local market, and 99% of the local residential market in Maryland.<sup>1</sup>

This low level of competitive entry is no small accident. VZ-MD has taken every opportunity to impede the development of competition in this state. Verizon's rigid opposition to local competition first came to light when the Commission considered MFS's effort to enter the local market. In that proceeding, Verizon argued that local competition "jeopardizes the substantial contribution that business revenues provide to the shared and common costs of Maryland's ubiquitous telephone network."<sup>2</sup> Later in that proceeding, Verizon sought to impose unreasonably high interconnection costs on local competitors.<sup>3</sup> Moreover, when the Commission issued its first UNE rate order, VZ-MD responded by issuing a "compliance" filing that intentionally misapplied the Commission's decision in order to generate UNE rates that were higher than the Commission intended.<sup>4</sup> Verizon initially resisted its obligation to provide combinations of unbundled network elements to CLECs, necessitating litigation and a further Commission order directing Verizon to provide combined network elements.<sup>5</sup> In light of this history, it is clear that Verizon's practice of punishing Maryland consumers who utilize CLEC services by denying access to its voice messaging and DSL services is an unacceptable anti-competitive tactic that Verizon will continue to employ until the Commission compels it to stop.

---

<sup>1</sup> Trends in Telephone Service, August 2001, Table 9.5, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission.

<sup>2</sup> *In the Matter of the Application of MFS Intelenet of Maryland*, Case No. 8584, Order No. 71155 at 13 (April 25, 1994) (citing Bell Atlantic Maryland's position). Bell Atlantic - Maryland also sought to limit MFS-I's authority to resale only. *Id.* at 14.

<sup>3</sup> *In the Matter of the Application of MFS Intelenet of Maryland*, Case No. 8584, Phase II, Order No. 72348 at 14 (December 28, 1995).

<sup>4</sup> See *Motion [of AT&T and MCI in Case 8731 Phase II] for Rehearing*, pp. 5ff (July 31, 1998) (detailing Bell Atlantic Maryland's "manipulation" of the fill factors in the compliance filing).

<sup>5</sup> See *In the Matter of the Petitions For Approval of Agreements and Arbitrations*, Case Number 8731, Order No. 74671 (1998).

B. Verizon's refusal to provide voice messaging services on a wholesale basis punishes Maryland consumers who obtain local service from Verizon's competitors

Voice messaging services provide to business and residential customers the ability to record messages when their telephone line is busy or cannot be answered and can also provide reminder, personal calendar, and call transfer functionality. Verizon makes voice messaging services available in Maryland, but only to consumers who choose Verizon as their local exchange carrier. This arbitrary restriction substantially undermines CLEC efforts to attract new customers in Maryland, and currently prevents CloseCall from providing local service to over 10% of its potential new customers. Moreover, this restriction severely disadvantages Maryland consumers, who are unable to obtain local exchange service from the provider of their choice because doing so would require them to lose their existing voice messaging service.

CloseCall recently conducted a survey which indicated that 35 out of 305 customers requesting CloseCall local service ultimately did not become CloseCall subscribers because Verizon would have responded by disconnecting their voice messaging services. As further explained below, Verizon restricts access to its voice messaging products to discourage customers from seeking competitive services, and does so in a manner that harms consumers.

In particular, when a customer switches from Verizon to a competitive local service provider, Verizon terminates the customer's access to voice messaging service immediately, without warning, and without offering any alternative option for maintaining voice messaging service except re-subscribing to Verizon's local service. First, this practice improperly ties in the consumer market the provision of Verizon's voice messaging and local exchange services. Second, suddenly terminating consumer voice messaging service without providing reasonable warning or service alternatives causes substantial consumer disruption and inconvenience and can be particularly punitive and unfair to our new customers. Specifically, Verizon does not

always fully remove the voice mail answering functionality from the switching customer's line. Rather, Verizon merely blocks the customer's access to their voice mail box. As a result, incoming calls receive a system error code after briefly ringing the customer's telephone, making it difficult for customers to answer their telephone calls and precluding the use of answering machines or other call-answering services.<sup>6</sup> In addition to this callous treatment, customers also lose their ability to access messages that they saved before Verizon unilaterally terminated their service. Moreover, when our customers call Verizon to try to resolve these problems, they are told that they must switch all of their local services back to Verizon in order to restore their voice messaging functionality. Even if the customer agrees to re-subscribe to Verizon's local exchange services in order to restore their voice messaging service, however, they are informed that their previously-programmed greetings, reminders, personal messages and saved messages have been permanently deleted.

Although alternative providers of voice messaging services exist and provide service in certain markets, Verizon's voice messaging service includes unique features and capabilities that are especially important to small and residential consumers and that are not practically available to consumers from other sources. For instance, "stutter dial tone," which is only available from Verizon, is an important feature that notifies consumers that they have voicemail. Without stutter dial tone, voice messaging customers would have to place frequent telephone calls to their voice messaging service to check for new voicemails. Emerging local exchange carriers cannot reasonably finance the equipment and facilities required to provide the level of functionality that Verizon's voice messaging services currently provide. In addition, the Telecommunications Act

---

<sup>6</sup> Specifically, unless the acquiring competitive carrier makes special arrangements with Verizon when processing the customer migration, Verizon will not terminate the "call-forwarding" aspect of the voice messaging functionality, and callers attempting to reach the customer will instead receive a prompt requesting that they enter a pass code.

does not require that competitive carriers purchase specific equipment or other facilities in order to enter new markets. Rather, the Telecommunications Act established without prejudice or discrimination that competitors may utilize market-entry strategies that rely on resale, unbundled network elements (“UNEs”), or the deployment of new facilities.<sup>7</sup>

Furthermore, in order to switch to a new voice messaging system, customers must set up new passwords, greetings, and learn to operate a voice messaging system that may be substantially different from the one they presently use. This additional inconvenience and burden can be a substantial disincentive for customers, especially small business and residential, who might otherwise subscribe to competitive local services.

In sum, Verizon’s systematic refusal to provide voice messaging services to consumers who obtain local telephone services from Verizon’s competitors is inequitable to Maryland consumers, undermines the Commission’s efforts to foster local competition, and must be remedied. Consequently, we request that the Commission direct Verizon to provide wholesale access to voice messaging services. At the very least, the Commission should direct Verizon to provide, as a stand-alone and separately-billed product, voice messaging services to customers who choose to obtain local services from competitive carriers. In addition, the Commission should specify that customers should not be subjected to any disruption of existing service or service provisioning delays when obtaining resold or Verizon-provisioned voice messaging service in this manner. Rather, Verizon should be directed to incorporate the provisioning of voice messaging into its existing CLEC ordering processes, in the same manner as it currently provides access to call waiting and caller-ID services.

---

<sup>7</sup> See *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, at 371-72 (1999) (noting that competitors may provide service by leasing UNEs).

C. Verizon's refusal to provide DSL services on a wholesale basis punishes Maryland consumers who obtain local service from Verizon's competitors

Broadband communications services, such as DSL, are becoming a fundamental requirement for businesses of all sizes, and a consumer priority. This is especially true for telecommuters and small business customers who need access to high-speed data capability, but on a small scale. Moreover, sophisticated but small customers such as these are particularly interested in obtaining the substantial cost and customer service benefits offered by competitive local service providers, such as CloseCall, but cannot afford to lose their broadband access. Granted, the customer may be able to obtain broadband access on a second, dedicated loop. However, the extra cost of a separate telephone line exclusively for DSL access can erase the cost savings offered by the competitive local service provider.

Currently, Verizon unfairly leverages this DSL market advantage to win back its lost local service customers. Specifically, knowing that a number of CLECs, including CloseCall, do not currently provide similar DSL services to their customers, Verizon contacts the customer and offers to provide line-sharing DSL service over the customer's local loop, but only if the customer subscribes to Verizon's local telephone service. This practice significantly hamstrings competition in the local exchange market by restricting access to cost-effective broadband service to Verizon's local exchange customers. This attempt to tie in the marketplace Verizon's broadband and local exchange services in order to discourage consumers from subscribing to competitive local services is contrary to the public interest, bars consumers from obtaining the benefits of local exchange competition, and chills competitive entry in the local service market. This practice is particularly telling in light of Verizon's pending request for Section 271 authority to provide long-distance services in Maryland. It would set an unfortunate precedent to

permit Verizon to use its provision of non-local exchange services to preclude competition in the local exchange market.

In addition, restricting access to Verizon's line-sharing DSL products solely to Verizon's local exchange service customers disadvantages Verizon's existing DSL service customers, because it forces upon them significant external (i.e., non-pecuniary) transaction costs if they choose to subscribe to a competitive local carrier. Specifically, a cost-sensitive and Internet-intensive subscriber will be very unlikely to transfer its local services from Verizon to a competitive carrier if doing so requires acquiring a new broadband service provider, an additional telephone line and new broadband equipment, a new ISP, and the publication of a new email address.

Consequently, it is vital for the establishment of local exchange competition that the Commission direct Verizon to provide uniform access to line-sharing DSL service and no longer reserve access to such services solely for its own local exchange customers. In addition, the Commission should specify that CLEC customers should not suffer any disruption of existing DSL service or encounter discriminatory service provisioning delays when obtaining resold or Verizon-provisioned line-sharing DSL services. Rather, Verizon should be directed to incorporate the provisioning of line-sharing DSL into its existing CLEC ordering processes, in the same manner that call waiting and caller-ID services are currently handled.

**II. The Commission has sufficient legal authority and a statutory mandate to curtail Verizon's improper practice of tying voice messaging and DSL services to its local exchange service**

Pursuant to §2-113 of the Public Utility Companies Article, Annotated Code of Maryland, the Commission has "substantial latitude" to ensure that public utilities operate in a manner that serves the public interest and compels the Commission to use this authority to "promote



adequate, economical and efficient delivery of utility services in the State without unjust discrimination.”<sup>8</sup> The Commission has previously determined that this provision authorizes it to review network use and interconnection in the competitive market.<sup>9</sup> It is also well established that the Commission has the authority to place specific requirements and duties on telecommunications carriers, including Verizon, so long as those requirements are competitively neutral and do not interfere with universal service obligations.<sup>10</sup> Moreover, the Commission has broad authority under Maryland law to regulate VZ-MD in a manner that best serves the interests of Maryland consumers. This authority and mandate are echoed in §4-301, which in the context of empowering the Commission to adopt alternative regulations, indicates that the Commission’s actions should protect consumers by “producing affordable and reasonably priced basic local exchange service,” ensuring the “quality, availability, and reliability of telecommunications services throughout the State,” and “encourag[ing] the development of competition.”

While the FCC has not yet required that voice messaging and line-sharing be offered at wholesale rates by incumbents such as Verizon, the FCC has not limited the authority of the states to do so. Certainly, pursuant to the Telecommunications Act, a Commission determination that voice messaging or line-sharing DSL services were telecommunications services<sup>11</sup> provided by VZ-MD at retail would require the provision of wholesale access to these services.<sup>12</sup> However, the Commission need not invoke such federal authority to resolve this complaint in a beneficial manner. As noted above, the Commission’s authority is sufficient to compel Verizon to provide wholesale access to voice messaging and line-sharing DSL services.<sup>13</sup>

---

<sup>8</sup> Public Utility Companies Article §2-113.

<sup>9</sup> See *In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996*, Case Number 8731, Order No. 74671, at 13.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> 47 U.S.C. § 153(46).

<sup>12</sup> 47 U.S.C. § 251(c)(4)(A).

<sup>13</sup> As further discussed below, relying solely state authority, several public utility commissions within Verizon’s

Moreover, the Commission has previously used its statutory authority to compel Verizon to modify anti-competitive behavior, benefiting local competition and the interests of Maryland consumers. For instance, the Commission has ordered Verizon to combine network elements and refrain from disassembling network elements that were already combined because “[s]uch separation and recombination serves no public purpose and provides no cost benefits” and because “disassembling network elements will put customers out of service unnecessarily while the disconnection and subsequent reconnections are made.”<sup>14</sup>

Similarly, Verizon’s continued refusal to provide voice messaging and DSL on loops that are also used by its competitors to provide local telephone service serves no public purpose and provides no cost benefits. Moreover, Verizon’s practice of suddenly disconnecting voice messaging and DSL services from subscribers who switch their local exchange service to Verizon’s competitors puts customers out of service unnecessarily, without justification and with maximum inconvenience. Consequently, the Commission should direct Verizon to provide to its competitors wholesale access to voice messaging and DSL services that can be provided on the same loop used by a CLEC to provide local service. In the alternative, Verizon should be directed to provide consumers with retail access to such services without any disruption and/or lost functionality .

---

service region have already directed Verizon to provide wholesale access to voice messaging services. See *infra* at III.

<sup>14</sup> *In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996*, Case Number 8731, Order No. 74671, at 17.

### **III. The FCC and Certain State Public Utility Commissions Have Determined that Wholesale Access to Verizon's Voice Messaging and Loop-Sharing DSL Service Serves the Public Interest**

Verizon currently offers voice messaging services on a wholesale basis in other states in the Northeast and Mid-Atlantic region. Specifically, the New York, Rhode Island,<sup>15</sup> and Vermont<sup>16</sup> state commissions have ordered Verizon to provide wholesale access to voice messaging, and such access is required by statute in Delaware.<sup>17</sup> Nevertheless, Verizon refuses to provide wholesale access to such services in Maryland. As explained above, a lack of wholesale access to voice messaging and shared-loop DSL services handicaps Verizon's competitors and harms Maryland consumers by forcing them to choose between obtaining competitive local exchange services from the carrier of their choice and obtaining the voice messaging service that they desire.

Moreover, in response to Verizon's own petitions, the FCC has endorsed Verizon's provisioning of DSL service on loops also used by its competitors to provide local service in Connecticut and Pennsylvania.<sup>18</sup> In so doing, the FCC held that enabling competitors to provide

---

<sup>15</sup> See *In Re: The Petition of Eastern Telephone, Inc. Requesting Verizon Rhode Island to File a Tariff Provision Allowing for the Resale of Voice Messaging Service*, Rhode Island Public Utilities Commission, Docket No. 3333, Order No. 16938 (December 31, 2001).

<sup>16</sup> The Vermont Public Service Board determined that voice messaging is a telecommunications service under Vermont law. See *Joint Petition of New England Telephone & Telegraph Company d/b/a NYNEX, NYNEX Corporation, and Bell Atlantic Corporation for Approval of a Wholly-Owned Subsidiary of Bell Atlantic Corporation into NYNEX Corporation (In Re: Compliance Phase)*, Vermont Public Service Board, Docket No. 5900, Order, (January 31, 2000).

<sup>17</sup> We note that Massachusetts and Virginia have declined to require Verizon to provide wholesale access to voice messaging. In its Order denying a complaint filed by RCN Telecom Services of Massachusetts, Inc. regarding Verizon's failure to make voice messaging available for resale, the Massachusetts Department of Telecommunications and Energy ("D.T.E.") concluded that it was not compelled to require Verizon to provide wholesale access to voice messaging by the Telecommunications Act or by the FCC's rules, and that it did not want to "broaden its jurisdiction" over previously unregulated services "[r]egardless of whether it is more efficient for competitors to resell [voice mail services] than it is to provide the services through other means." See, *Complaint of RCN Telecom Services of Massachusetts, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic - Massachusetts for Failure to Make Voice Messaging Service Available for Resale*, Mass. D.T.E. 97-101 (November 9, 1998).

<sup>18</sup> See, *Applications of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, 15 FCC Rcd. 14032 (2000).

resold DSL service to their voice subscribers over a single local loop would benefit consumers by expanding competition in the provision of advanced services.<sup>19</sup> For the very same reasons, Maryland consumers would benefit from the ability to independently select a DSL provider and a local exchange carrier. Consequently, pursuant to the Commission's statutory authority and mandate, the Commission should direct Verizon to provide wholesale access to DSL service to be provided on CLEC loops or, in the alternative, compel Verizon to provide loop-sharing DSL to CLEC customers on a retail basis.

## **V. Conclusion**

As discussed in detail above, Verizon's refusal to make voice messaging and DSL services available on customer loops over which its competitors provide local service is an unreasonable and anti-consumer practice that is contrary to Maryland law and public policy. This practice is yet another example of Verizon's continued effort to frustrate the Commission's efforts to open Maryland's local exchange market to competition. Several state public utility commissions in Verizon's service region have held that this practice is contrary to consumer interests and have ordered Verizon to make voice messaging services available on loops over which its competitors provide local exchange service. In addition, the FCC has determined that wholesale access to Verizon's line-sharing DSL services supports competition and serves the public interest. CloseCall respectfully requests that the Commission act expediently to compel

---

<sup>19</sup> *Id.* at para. 5.

Verizon to make voice messaging and loop-sharing DSL available to its competitors on a wholesale basis or, in the alternative, direct Verizon to make these services available directly to consumers on a stand-alone and separately-billed basis without any disruption and/or lost functionality.

Respectfully submitted,

Thomas Mazerski  
President & CEO  
CloseCall America, Inc.  
101 Log Canoe Circle  
Stevensville, Maryland 21666

---

Carville B. Collins  
Vincent M. Paladini  
Piper Rudnick LLP  
6225 Smith Avenue  
Baltimore, Maryland 21209-3600

Counsel for CloseCall America, Inc.

Dated: May 2, 2002